



Commonwealth of Virginia
Virginia Information Technologies Agency

VIDEOCONFERENCING EQUIPMENT

Optional Use Contract

Date: July 31, 2003

Contract #: VA-020501-WHIT

Authorized User: State Agencies, Institutions and Public Bodies
as defined in the VAAP

Contractor: The Whitlock Group
3900 Gaskins Road
Richmond, VA 23233

FIN: 54-0617014

Contact Person Todd White
(804) 726-9843
(800) 726-9843
(804) 273-9380 fax

Contact Price List: www.whitlock.com

Term: June 7, 2002 – June 6, 2004

Payment: Net 30 days

For Additional Information, Please Contact:

Contract Compliance Information:
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Technical Information:
Staff
Acquisition Services Division
Phone: 804-371-5900
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NOTES: Individual Commonwealth of Virginia employees are not authorized to purchase equipment or services for their personal use from this Contract.

For updates, please visit our Website at <http://www.oas.virginia.gov>

VIRGINIA INFORMATION TECHNOLOGIES AGENCY (VITA): Prior review and approval by VITA for purchases in excess of \$100,000.00 is required for State Agencies and Institutions only.

CONTRACT #VA-020501-WHIT
EXTRACT CHANGE LOG

[illegible]

**MASTER AGREEMENT
CONTRACT VA-020501-WHIT
BETWEEN
THE COMMONWEALTH OF VIRGINIA
AND
AUDIO FIDELITY COMMUNICATIONS CORPORATION
d.b.a. THE WHITLOCK GROUP**

Effective October 1, 2001 the Virginia Public Procurement Act has been recodified and is now Chapter 43 of Title 2.2 of the Code of Virginia. Any references herein to the VPPA provisions formally in Title 11 should be deemed amended to reflect the amended code citations.

1. SCOPE OF AGREEMENT

This is an Agreement (the "Agreement") between the Commonwealth of Virginia, hereinafter referred to as "Commonwealth" or "State" or "DIT" (Department of Information Technology) and Audio Fidelity Communications Corporation d.b.a. The Whitlock Group (the "Contractor"), a Virginia corporation having its principal place of business at 3900 Gaskins Road, Richmond, VA 23233. This Agreement contains the Contractual terms and conditions by which the Commonwealth will establish a Master Contract for the use by State Agencies, Institutions, and other public bodies as defined in § 11-37. *Definitions* of the Virginia Public Procurement Act (VPPA), as amended, and hereinafter referred to as "Authorized Users, to acquire videoconferencing equipment ("Equipment") and "Services", including, but not limited to Full Integrator Services (VEFIS) of that Equipment, installation, training, warranty, and maintenance pursuant to the Commonwealth's Request For Proposal #2001-032, dated October 23, 2001 (the "RFP") and the Contractor's proposal, dated November 30, 2001 in response thereto. Hereinafter "Equipment" shall include any necessary software, firmware, and microcode ("Software") integral to the Equipment

2. INTERPRETATION OF AGREEMENT

As used in this Agreement, "Software" and "Software product" shall include all related materials and documentation, whether in machine-readable or printed form.

Headings are for reference purposes only and shall not be considered in construing this Agreement.

The documents comprising this Agreement, and their order of precedence in case of conflict, are: (1) the Contractor's cost proposal dated November 30, 2001 in response to the Commonwealth's RFP 2001-032 dated October 23, 2001; (2) this document, consisting of Terms and Conditions labeled 1 through 75, Attachment A, entitled Product Pricing and Attachment B entitled Lobbying Certificate; (3) the specific sections of the Contractor's proposal dated November 30, 2001 in response to the following specific sections of the Commonwealth's RFP 2001-032 dated October 23, 2001, sections: Section 1.28 entitled Participation in State Procurement Transactions by Small Businesses, and Businesses Owned by Women and Minorities, Section 4 entitled Mandatory Requirements, and Section 5 entitled Desirable Requirements; (4) the corresponding sections of the Commonwealth's RFP 2001-032 dated October 23, 2001; and (5) all executed Orders and Attachments referencing this Agreement. The foregoing

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documents represent the complete and final agreement of the parties with respect to the subject matter of this Agreement.

If any term or condition of this Agreement is found to be illegal or unenforceable, it shall be severed, and the validity of the remaining terms and conditions shall not be affected.

Nothing in this Agreement shall be construed as an express or implied waiver of the Commonwealth's sovereign or Eleventh Amendment immunity, or as a pledge of its full faith and credit.

3. AVAILABILITY OF EQUIPMENT

The Contractor represents and warrants that all Products were formally announced for marketing purposes before execution of this Agreement or, in the case of subsequent Orders, before execution of such Orders.

4. HARDWARE SPECIFICATION

Each hardware Product shall conform to all specifications published or provided by the Contractor or manufacturer, including but not limited to, physical characteristics, operating characteristics, space requirements, power requirements, and maintenance.

5. EQUIPMENT CONDITION

All equipment to be supplied by Contractor shall be new equipment, except that used equipment may be delivered if it is clearly identified as such in the proposal and prior to delivery thoroughly inspected, repaired as necessary, and warranted as equivalent to new equipment. Contractor warrants that any such used equipment will be acceptable to the manufacturer under its standard equipment maintenance program and at standard rates. If such used equipment is subsequently not accepted for such maintenance, Contractor shall be responsible for all costs associated with expeditiously repairing, improving or upgrading such equipment to the level required by the manufacturer to make the equipment acceptable to the Contractor under its standard maintenance program. All new and used equipment proposed by Contractor must have been approved by Underwriters Laboratories or a recognized equivalent certification agency.

6. MOVEMENT OF EQUIPMENT

a. Equipment may be moved from one Commonwealth location to another upon thirty (30) days written notice to the Contractor. Prior written notice shall not be required in case of emergency. Contractor shall continue to maintain the equipment as before, but if the Contractor has no facilities at the new location, the maintenance terms for the relocated equipment shall be equitably adjusted.

b. Shipment to the new installation site shall be at the Commonwealth's expense by any appropriate mode of transportation selected by the Commonwealth. Contractor shall supervise packing, unpacking, and relocation of the equipment. Commonwealth shall compensate the Contractor for this

service if the Contractor charges substantially all of its commercial customers for such services. If such charges are assessed, they will be at the Contractor's then current standard rates.

c. There shall be no relocation charge to the Commonwealth in the event of transfer of licensed Software Product(s) to another location and the licensed Software Product (s) is to be discontinued at the old location.

7. MANUALS

Contractor shall supply an operations manual for each Product, and in the case of custom-developed deliverables, shall also provide a manual describing the functions, characteristics and operating capabilities that may be expected of such deliverables.

8. INSPECTION/LATENT DEFECTS

All Products are subject to inspection and test. Products that do not meet specifications may be rejected. Failure to reject, however, does not relieve the Contractor of liability for latent or hidden defects subsequently revealed when goods are used after acceptance has occurred. If latent defects are found at any time during the term of this Agreement, the Contractor shall repair or replace the defective goods. This remedy shall be in addition to any other remedies or obligations under this Agreement or provided by law.

9. VENDORS MANUAL

This solicitation is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any revisions thereto, which are hereby incorporated into this Contract in their entirety. A copy of the manual is normally available for review at the purchasing office and in addition, a copy can be obtained by calling the Division of Purchases and Supply (804) 786-3842, or by accessing the Department of General Services (DGS), Division of Purchases and Supply (DPS) Internet Home Page (www.dgs.state.va.us/dps/).

10. APPLICABLE LAWS AND COURTS

This solicitation and any resulting Contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The Contractor shall comply with all applicable federal, state and local laws, rules and regulations.

11. ANTI-DISCRIMINATION

By submitting their proposals, offerors certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 11-51 of the Virginia Public Procurement Act. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient

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of goods, Services, or disbursements made pursuant to the Contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that Contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (Code of Virginia, § 11-35.1E).

In every Contract over \$10,000 the provisions in A. and B. below apply:

A. During the performance of this Contract, the Contractor agrees as follows:

- 1) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- 2) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
- 3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.

B. The Contractor will include the provisions of A. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

12. ETHICS IN PUBLIC CONTRACTING

By submitting their proposals, offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, Services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

13. IMMIGRATION REFORM AND CONTROL ACT OF 1986

By submitting their proposals, offerors certify that they do not and will not during the performance of this Contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

14. DEBARMENT STATUS

By submitting their proposals, offerors certify that they are not currently debarred by the Commonwealth of Virginia from submitting bids or proposals on Contracts for the type of goods and/or Services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

15. ANTITRUST

By entering into a Contract, the Contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or Services purchased or acquired by the Commonwealth of Virginia under said Contract.

16. MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR IFBs AND RFPs

Failure to submit a proposal on the official state form provided for that purpose may be a cause for rejection of the proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.

17. CLARIFICATION OF TERMS

If any prospective offeror has questions about the specifications or other solicitation documents, the prospective offeror should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.

18. PAYMENT

A. To Prime Contractor:

- 1) Invoices for items ordered, delivered and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/Contract. All invoices shall show the state Contract number and/or purchase order number; social security number (for individual Contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
- 2) Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.

- 3) All goods or Services provided under this Contract or purchase order, that are to be paid for with public funds, shall be billed by the Contractor at the Contract price, regardless of which public agency is being billed.
- 4) The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- 5) Unreasonable Charges. Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, Contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges that appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the Contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A Contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges that are not in dispute (*Code of Virginia*, § 11-69).

B. To Subcontractors:

- 1) A Contractor awarded a Contract under this solicitation is hereby obligated:
 - (a) To pay the subcontractor(s) within seven (7) days of the Contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the Contract; or
 - (b) To notify the agency and the subcontractor(s), in writing, of the Contractor's intention to withhold payment and the reason.
 - (c) The Contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the Contract) on all amounts owed by the Contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (b) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier Contractor performing under the primary Contract. A Contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

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19. PRECEDENCE OF TERMS

Paragraphs 8-18 of these General Terms and Conditions shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

20. QUALIFICATIONS OF OFFERORS

The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the offeror to perform the Services/furnish the goods and the offeror shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect offeror's physical facilities prior to award to satisfy questions regarding the offeror's capabilities. The Commonwealth further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such offeror fails to satisfy the Commonwealth that such offeror is properly qualified to carry out the obligations of the Contract and to provide the Services and/or furnish the goods contemplated therein.

21. TESTING AND INSPECTION

The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and Services conform to the specifications.

22. ASSIGNMENT OF CONTRACT

A Contract shall not be assignable by the Contractor in whole or in part without the written consent of the Commonwealth.

23. DEFAULT

In case of failure to deliver goods or Services in accordance with the Contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.

24. TAXES

Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request, and can be obtained online at <http://www.tax.state.va.us/>. Deliveries against this Contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-719076K.

25. USE OF BRAND NAMES

Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict offerors to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article which the public body, in its sole discretion, determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The offeror is responsible to clearly and specifically identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the Commonwealth to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the offeror clearly indicates in its proposal that the product offered is an equal product, such proposal will be considered to offer the brand name product referenced in the solicitation.

26. TRANSPORTATION AND PACKAGING

By submitting their proposals, all offerors certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.

27. INSURANCE

By signing and submitting a bid or proposal under this solicitation, the bidder or offeror certifies that if awarded the Contract, it will have the following insurance coverages at the time the Contract is awarded. For construction Contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 11-46.3 and 65.2-800 et seq. of the *Code of Virginia*. The bidder or offeror further certifies that the Contractor and any subcontractors will maintain these insurance coverages during the entire term of the Contract and that all insurance coverages will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

INSURANCE COVERAGES AND LIMITS REQUIRED:

1. Worker's Compensation - Statutory requirements and benefits.
2. Employers Liability - \$100,000.
3. Commercial General Liability - \$500,000 combined single limit. Commercial General Liability is to include Premises/Operations Liability, Products and Completed Operations Coverage, and Independent Contractor's ~~Liability~~ or Owner's and Contractor's Protective Liability. The

Commonwealth of Virginia must be named as an additional insured when requiring a Contractor to obtain Commercial General Liability coverage.

4. Automobile Liability - \$500,000 - Combined single limit.

28. ANNOUNCEMENT OF AWARD

Upon the award or the announcement of the decision to award a Contract as a result of this solicitation, ASD will publicly post such notice on its website at <http://asd.state.va.us/> for a minimum of ten (10) days.

29. DRUG-FREE WORKPLACE

During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific Contract awarded to a Contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Contract.

30. NONDISCRIMINATION OF CONTRACTORS

A bidder, offeror, or Contractor shall not be discriminated against in the solicitation or award of this Contract because of race, religion, color, sex, national origin, age, or disability or against faith-based organizations. If the award of this Contract is made to a faith-based organization and an individual, who applies for or receives goods, Services, or disbursements provided pursuant to this Contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, Services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, Services, or disbursements from an alternative provider.

31. NON-APPROPRIATION

All funds for payment of Equipment, Software or Services ordered under this Contract are subject to the availability of legislative appropriation for this purpose. In the event of non-appropriation of funds by the Legislature for the items under this Contract, the Commonwealth will terminate this

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Contract for those goods or Services for which funds have not been appropriated. Written notice will be provided to the Contractor as soon as possible after legislative action is completed.

If any purchases are to be supported by federal funding, and such funding is not made available, the Commonwealth may terminate this Contract for goods or Services dependent on such federal funds without further obligation.

32. CONTRACTUAL RECORDS

The Contractor shall make all Contractual books and records and other documents relating to matters under this Agreement available to the Commonwealth and its designated agents for purposes of audit and examination for a period of five years after final payment.

Contractual records include, but are not limited to, this Agreement and all executed Orders, Attachments, modifications, invoices, and correspondence between the parties to this Agreement.

33. PRIME CONTRACTOR RESPONSIBILITY

If the Contractor's proposal includes any goods or Services to be supplied by another party, the Contractor agrees as follows:

a. The Contractor shall act as prime Contractor for the procurement and maintenance of the entire proposed configuration and shall be the sole point of contact with regard to all obligations under this Agreement.

b. The Contractor hereby represents and warrants that the Contractor has made such other party aware of the proposed use and disposition of the other party's product or Services, and that such other party has agreed in writing that it has no objection thereto.

34. PATENT/COPYRIGHT PROTECTION

Contractor, at its own expense, shall defend any suit brought against the Commonwealth for the infringement of patents, copyrights or trade secrets enforceable in the United States if the claim of infringement is alleged to relate to or arise from the Contractor's or Commonwealth's use of any Equipment, Software, materials or information prepared, developed or delivered in connection with performance of this Agreement. In such suit, Contractor shall indemnify the Commonwealth, its agents, officers and employees for any loss, liability or expense incurred as a result of such suit.

The purchasing agency shall notify the Contractor of such suit within a reasonable time after learning of it and shall give the Contractor the full right and opportunity to conduct the defense of the suit, subject however to the requirements of Section 2.1-122 and Section 2.1-127 of the Code of Virginia or any successor statute. If principles of governmental or public law are involved, the Commonwealth may, at its option and expense, participate in the defense of the suit.

The Contractor shall not be required to indemnify the Commonwealth for liability arising solely out of the Commonwealth's own specifications or design or solely from the combination of Equipment or Software furnished hereunder with any Equipment or Software not supplied by the Contractor.

If, any Product or Service becomes, or in the Contractor's opinion, is likely to become, the subject of a claim of infringement, Contractor may, at its option, provide noninfringing substitutes that are satisfactory to the Commonwealth, or at Contractor's option and expense, may obtain the right for the Commonwealth to continue the use of such Product or Service.

If the use of such Equipment or Software by the Commonwealth is prevented by permanent injunction or by Contractor's failure to procure the right for the Commonwealth to continue using the Software, the Contractor agrees to take back the infringing Equipment, Software, materials or information and refund the total amount the Commonwealth has paid Contractor under this Agreement, less one half (1/2%) percent of the total paid for each month of use by the Commonwealth. This obligation is in addition to the obligations cited in the first four subparagraphs above of paragraph 27.

35. CONTRACTUAL DISPUTES

In accordance with Section 11-69 of the Code of Virginia, Contractual claims, whether for money or other relief, shall be submitted in writing to the purchasing agency no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such claim must be given to such agency at the time of the occurrence or beginning of the work upon which the claim is based. Pendency of claims shall not delay payment of amounts agreed due in the final payment. The purchasing agency shall render a final decision in writing within thirty (30) days after its receipt of the Contractor's written claim.

The contractor may not invoke any available administrative procedure under Section 11-71 of the Code of Virginia nor institute legal action prior to receipt of the purchasing agency's decision on the claim, unless that agency fails to render its decision within thirty (30) days. The decision of the purchasing agency shall be final and conclusive unless the Contractor, within six (6) months of the date of the final decision on the claim, invokes appropriate action under Section 11-70, Code of Virginia or the administrative procedure authorized by Section 11-71, Code of Virginia.

The Department of Information Technology, its officers, agents and employees, including, without limitation, the Contracts Manager, are executing this Agreement and any Orders issued hereunder, solely in its or their statutory and regulatory capacities as agent for the Commonwealth agency purchasing and receiving the goods or services identified in Attachment "A" to this Agreement or on the subsequent Order in question and need not be joined as a party to any dispute that may arise thereunder.

In the event of any breach by the Commonwealth, Contractor's remedies shall be limited to claims for damages and Prompt Payment Act interest and, if available and warranted, equitable relief, all such claims to be processed pursuant to this Section. In no event shall Contractor's remedies include the right to terminate any license or support services hereunder.

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36. LIMITATION OF LIABILITY

To the maximum extent permitted by applicable law, the Contractor will not be liable under this Contract for any indirect, incidental, special or consequential damages, or damages from loss of profits, revenue, data or use of the supplies, Equipment and/or Services delivered under this Contract. This limitation of liability will not apply, however, to liability arising from: (a) personal injury or death; (b) defect or deficiency caused by willful misconduct or negligence on the part of the Contractor; or (c) circumstances where the Contract expressly provides a right to damages, indemnification or reimbursement.


37. PERIODIC PROGRESS REPORTS/INVOICES

For Contracts requiring the submission of periodic Contract performance progress reports or program status reports, the offeror will include a section on involvement of small businesses and businesses owned by women and minorities. This section will specify the actual dollars Contracted to-date with such businesses, actual dollars expended to-date with such businesses and the total dollars planned to be Contracted for with such businesses on this Contract. This information shall be provided separately for small businesses, minority-owned businesses and women-owned businesses.

If the Contract does not require the submission of periodic progress reports, the offeror will provide the above required information on actual involvement of small businesses and businesses owned by minorities and women as part of their periodic invoices.

38. FINAL ACTUAL INVOLVEMENT REPORT

The Contractor will submit, prior to completion or at completion of the Contract and subject to final payment, a report on the actual dollars spent with small businesses and businesses owned by women and minorities during the performance of the Contract. At a minimum, this report shall include for each firm Contracted with and for each such business class (i.e., small, minority-owned, women-owned) the total actual dollars spent on this Contract, the planned involvement of the firm and business class as specified in the proposal, and the actual percent of the total estimated Contract value. A suggested format is as follows:

FIRM NAME				
ADDRESS AND PHONE NUMBER	TYPE GOODS/ SERVICES	ACTUAL DOLLARS	PLANNED DOLLARS	% OF TOTAL CONTRACT
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
Totals for Business Class			_____	_____

39. BUY OUTS - THIRD PARTY ACQUISITION OF CONTRACTOR'S SOFTWARE

Contractor shall promptly notify the DIT Contracts Manager in the event that the intellectual property in or business associated with any Product or Service covered by this Agreement is acquired from the Contractor by a third party or in the event the Contractor or substantially all of its assets is acquired by a third party.

The terms and conditions of this Agreement including but not limited to the license rights and related Services shall not be affected in such event identified above even if the successor or assignee already has an Agreement with the Commonwealth covering products and Services of the type covered by this Agreement. The Contractor's responsibilities under this Agreement shall not be released by such acquisition. In addition, prior to any acquisition, Contractor shall obtain for the Commonwealth's benefit the assignee's Agreement to fully perform this Agreement.

The successor or assignee, by taking any benefit, including acceptance of payment, under this Agreement ratifies this Agreement.

The failure of any successor or assignee of the Contractor to acknowledge its obligation to adhere to the terms and conditions of this Agreement shall constitute a breach of this Agreement for which the successor or assignee and the original Contractor shall be liable and subject to debarment.

40. COMPLIANCE WITH FEDERAL LOBBYING ACT

A. Contractor shall not, in connection with this Agreement, engage in any activity prohibited by 31 U.S.C.A. Section 1352 (entitled "Limitation on use of appropriated funds to influence certain Federal Contracting and financial transactions") or by the regulations issued from time to time thereunder (together, the "Lobbying Act"), and shall promptly perform all obligations mandated by the Lobbying Act in connection with this Agreement, including, without limitation, obtaining and delivering to the Commonwealth all necessary certifications and disclosures.

B. Contractor is hereby advised that a significant percentage of the funds used to pay Contractor's invoices under this Agreement may be federal funds. Under no circumstances shall any provision of this Agreement be construed as requiring or requesting the Contractor to influence or attempt to influence any person identified in 31 U.S.C.A. Section 1352 (a) (1) in any matter.

C. A representative of Contractor shall sign the certification attached as Attachment "B" and deliver such certification to the Commonwealth simultaneously with the execution and delivery of this Agreement. Contractor shall have the certification signed by a representative with knowledge of the facts and shall fulfill the promises of undertakings set forth in the certification.

41. NONVISUAL ACCESS TO TECHNOLOGY

All information technology which, pursuant to this Agreement, is purchased or upgraded by or for the use of any State agency or institution or political subdivision of the Commonwealth (the "Technology") shall comply with the following nonvisual access standards from the date of purchase or upgrade until the expiration of this Agreement:

(i) effective, interactive control and use of the Technology shall be readily achievable by nonvisual means;

(ii) the Technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom any blind or visually impaired user of the Technology interacts;

(iii) nonvisual access technology shall be integrated into any networks used to share communications among employees, program participants or the public; and

(iv) the technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network Services used by persons who are not blind or visually impaired.

Compliance with the foregoing nonvisual access standards shall not be required if the head of the using agency, institution or political subdivision determines that (i) the Technology is not available with nonvisual access because the essential elements of the Technology are visual and (ii) nonvisual equivalence is not available.

Installation of hardware, Software, or peripheral devices used for nonvisual access is not required when the Technology is being used exclusively by individuals who are not blind or visually impaired, but applications programs and underlying operating systems (including the format of the data) used for the manipulation and presentation of information shall permit the installation and effective use of nonvisual access Software and peripheral devices.

If requested, the Contractor must provide a detailed explanation of how compliance with the foregoing nonvisual access standards is achieved and a validation of concept demonstration.

The requirements of this Paragraph shall be construed to achieve full compliance with the Information Technology Access Act, 2.1-807 through 2.1-811 of the Code of Virginia.

42. CONTRACTOR'S REPORT OF SALES

The Contractor must report the quarterly dollar value, in U.S. dollars and rounded to the nearest whole dollar, of all sales under this Contract by calendar quarter; i.e., January through March, April through June, July through September, and October through December. The dollar value of a sale is the price paid by the user for products and Services on a Contract order as recorded by the Contractor. The

D.I.T.

reported Contract sales value must include the Industrial Funding Adjustment, as delineated in paragraph entitled "Industrial Funding Adjustment". The Contractor shall provide this report in hard copy to the Controller, DIT, and a copy of the report to the Contracts Manager, DIT, both within 30 days after the end of each quarterly reporting period as defined herein. The report must show each individual item and quantities purchased and the purchaser. The report is required to be hard copy. DIT may at a later time, agree to an electronic version of the report, however, in lieu of any express Agreement by both parties as to the electronic format, the Commonwealth will only accept a hardcopy version. The Contractor shall define "sale" prior to the first reporting period and then shall maintain that definition through out the term of this Agreement. Sale may be defined as; 1) when the Commonwealth pays the purchase price, or 2) when the Commonwealth accepts the Products or 3) other as defined by the Contractor.

43. INDUSTRIAL FUNDING ADJUSTMENT

The Contractor must pay DIT, an Industrial Funding Adjustment (IFA). The Contractor must remit the IFA within 30 days after the end of each quarterly reporting period as established in the clause entitled "Contractor's Report of Sales". The IFA equals two percent (2%) of the total quarterly sales reported. Contractor shall remit the IFA together with a copy of the Contractor's Report of Sales as delineated in paragraph 34, above. The IFA reimburses the Commonwealth and defrays the costs for IT procurement and the administration of the subsequent awards. The IFA amount due must be paid by check with identification of "Contract number", "report amounts", and "report period", on either the check stub or other remittance material. DIT may at its discretion, agree to an electronic funds transfer, in lieu of a check, however in the absence of an express written Agreement from DIT that validates Agreement, then the payment shall be made by check as described herein made payable to the Controller, DIT.

If the full amount of the IFA is not paid within thirty (30) calendar days after the end of the applicable reporting period, it shall constitute a Contract debt to the Commonwealth of Virginia, and the State may exercise all rights and remedies available under law. Failure to submit sales reports, falsification of sales reports, and or failure to pay the IFA in a timely manner may result in termination or cancellation of this Contract. Willful failure or refusal to furnish the required reports, falsification of sales reports, or failure to make timely payment of the IFA constitutes sufficient cause for terminating this Contract for default.

It is the intent of the Commonwealth to capture 2% of all sales, including temporary reduced pricing, fire sales, one time sales, trade ins, promotional items that have been marked down and all sales to the Commonwealth under this Agreement.

44. UNIVERSAL SERVICE FUND

The Contractor agrees to make available to all requesting USF participants, all products and Services as listed and priced herein. The Contractor agrees to provide the Products and Services directly to the USF participant, and to bill each USF participant directly. The Contractor agrees and understands that the responsibility for collection of all charges incurred, and the responsibility for resolving all Product and Service problems as well as administration of said Contract for USF participation shall be the sole responsibility of the Contractor.

The Contractor warrants that it is qualified under applicable Federal Communications Commission and Virginia State Corporation Commission rules to apply for and receive Universal Service Fund allocations/disbursements for Services provided pursuant to this Contract to agencies and entities and users which are eligible for those allocations/disbursements on behalf, and for the benefit, of those agencies and institutions. The Contractor also agrees to maintain those qualifications, and to assist agencies and entities in applying for and receiving these allocations/disbursements.

45. TERM

This Agreement shall take effect on the date of its final execution by both parties, and shall continue for two (2) consecutive years. The Commonwealth at its sole discretion, may extend this Agreement for three (3), one (1) year periods. The Commonwealth will issue written documentation to the Contractor a minimum of thirty (30) days prior to the end of each renewal period for any extension thereafter.

46. PRICE PROTECTION

The Commonwealth shall not pay any costs above those specified in this Agreement or set forth on any Order or Attachment referencing this Agreement. If within twelve (12) months following the acceptance of any Product or Service, the list price of the Product or Service is reduced below the price paid hereunder, then the difference shall be refunded to the Commonwealth. Such refund shall be made to the Authorized User within thirty (30) days from the date the decrease is announced to the general public. In addition, written notification of the decrease will be provided to DIT.

47. SITE PREPARATION

At least thirty (30) days prior to the scheduled delivery date, the Contractor may provide the Commonwealth with any environmental specifications necessary to ensure the proper and efficient operation of all Products. All such specifications shall be in writing.

The Commonwealth shall prepare the site at its own expense and in accordance with all such environmental specifications.

Ten days prior to the scheduled delivery date, the Contractor shall, if Contractor deems it necessary, inspect the site and notify the Commonwealth in writing of any environmental inadequacies. In the absence of notification to the contrary, the Commonwealth's environment shall be deemed acceptable to the Contractor.

Any delay or additional site preparation expense caused in whole or in part by erroneous or incomplete environmental specifications shall be the Contractor's responsibility.



48. DELIVERY DATE

The Contractor shall deliver the Products and Services ready for testing, by the delivery date specified in any executed Attachment or Order referencing the Agreement. If delivery of all Products and Services is not completed within thirty (30) days after the scheduled delivery date, the Commonwealth may cancel the Agreement without further obligation. The Commonwealth may postpone any delivery date by notifying the Contractor at least seven (7) days prior to the delivery date. However, the delivery date shall not be postponed more than a total of thirty (30) days.

49. COMMENCEMENT OF ACCEPTANCE TESTING

The Products and Services shall be considered ready for testing when the Contractor provides the Commonwealth with the documentation of a successful installation or after the Authorized User has completed a successful installation, in either case, the minimum design capabilities specified by Contractor, this Contract or other published documentation from the OEM have been met. If the Contractor certifies that the Products and Services are ready to begin acceptance testing prior to the scheduled delivery date, the Commonwealth, at its option, may elect to test the Products and Services and change the delivery date accordingly.

50. REQUIRED PERFORMANCE LEVEL

To qualify for acceptance, all Products and Services must concurrently perform in accordance with the technical specifications and functional descriptions, as contained or referenced in this Agreement, at an average effectiveness level of 95% or more, calculated over a period of thirty (30) consecutive days. The Commonwealth shall not pay any charges, either beforehand or retroactively, associated with the Contractor's requirement to achieve this performance level. If any Product or Service does not meet the standard of performance during the initial thirty (30) consecutive days, the acceptance period shall continue on a day-to-day basis until all Products and Services concurrently meet the standard of performance for thirty (30) consecutive days.

Should it be necessary, the Commonwealth may delay the start of the acceptance period, but such a delay shall not exceed thirty (30) consecutive days.

51. ACCEPTANCE

The Products and Services shall be deemed accepted on the first day after successful completion of the acceptance period. Upon request, the Commonwealth shall provide written confirmation of acceptance. If the standard of performance has not been met after ninety (90) calendar days have elapsed from the start of the acceptance period, the Commonwealth may require a replacement to be provided or may avail itself of the remedies for breach.

52. RECORDS

The Commonwealth shall maintain appropriate daily records documenting performance during the acceptance period and such records shall be conclusive for purposes of determining acceptance.

53. INVOICES

All invoices shall be rendered promptly after all Equipment and/or Services covered by the invoice have been accepted. No invoice may include any costs other than those identified herein. Invoices shall provide at a minimum:

- 1 Type and description of the Equipment or Services;
2. Serial number, if any;
3. Charge for each item;
4. This Contract Number, and;
5. Contractor's Federal Identification Number (FIN).

54. BREACH

The Contractor shall be deemed in breach of this Agreement if the Contractor (a) fails to make any Product or Service ready for acceptance testing by the specified delivery date; (b) repeatedly fails to respond to requests for maintenance or other required Service within the time limits set forth in this Agreement; (c) fails to comply with any other term of this Agreement and fails to cure such noncompliance within ten days (or such greater period as is acceptable to the Commonwealth) following Contractor's receipt of a notice identifying such noncompliance; or (d) fails to provide a written response to a notice of noncompliance within ten days after receiving same.

The Contractor shall not be in breach of this Agreement if its default was due to causes beyond the reasonable control of, and occurred without any fault or negligence on the part of, both the Contractor and its subcontractors. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Commonwealth in either its sovereign or Contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

In the event of breach, in addition to any other remedies provided by law, the Commonwealth may cancel its obligations with respect to any or all unaccepted Products or Services. All costs for deinstallation and return of Products and Services shall be borne by the Contractor. In no event shall any failure by the Commonwealth to exercise any remedy available to it be construed as a waiver of or consent to any breach.

55. MODIFICATIONS

This Contract may be modified in accordance with Section 11-55 of the Code of Virginia. Such modifications may only be made by the representatives noted below. No modifications to this Contract shall be effective unless it is in writing on paper and signed in ink by the duly authorized representative of both parties. No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent to breach is in writing. For purposes of the Contract, the only authorized representative for the Commonwealth shall be the Contracts Manager, DIT or his duly designated alternate, and for the Contractor the person signing the Contract.

Any Contract issued on a firm fixed price basis may not be increased more than twenty-five percent (25%) or \$50,000.00 whichever is greater, without the approval of the Governor of the Commonwealth of Virginia or his authorized designee.

56. ORDERING

Authorized Users may order Products and Services from this Contract by one of the following methods:

- a. Issuing Agency Purchase Order, Form DBS-41-001
- b. Charge Card:
 - 1) An ordering and payment process under Contract with American Express (AMEX). Each order must not exceed \$5,000.00 or the then current charge card limit. Payment will be made to Contractor by AMEX within three business days.
 - 2) Any other order/payment charge or credit card process, such as AMEX, MASTERCARD, or VISA, under contract for use by an Authorized User.
- c. A Delivery Order issued by the Acquisition Services Division, DIT.

This ordering authority is limited to issuing orders for the Products and Services available under this Agreement. Under no circumstances shall any Authorized User have the authority to modify this Agreement.

57. RISK OF LOSS

For any Equipment purchased, the Contractor shall have the risk of loss or damage to all Equipment until clear and unrestricted title to such Equipment is transferred to the Commonwealth.

58. TITLE TO EQUIPMENT

Clear and unrestricted title to all Equipment purchased under this Agreement shall pass to the Commonwealth upon payment of the purchase price.

59. OPERATIONAL RESTRICTIONS

Contractor warrants that, except as specifically agreed in writing all Products may be operated at any time for the convenience of the Commonwealth (exclusive of time required for preventive maintenance, remedial maintenance and approved engineering changes). Without limiting the foregoing, Contractor warrants that there are no restrictions as to consecutive hours or length of personnel shifts. The Commonwealth may make the Products available to any Commonwealth agency or any other users under conditions where such use is supervised by the Commonwealth.

60. ENGINEERING CHANGES

Contractor sponsored modifications and/or engineering changes shall be made with the consent of the Commonwealth at no additional charge for a period of one (1) year from the date of installation. The Commonwealth reserves the right at all times to schedule these Contractor sponsored modifications and/or changes to minimize the impact on the daily operations of the State.

61. SUPPLIES

Authorized charges do not include operational supplies (e.g. paper, tape, etc.) unless such supplies are specifically identified in the Schedule. All supplies used by the Commonwealth shall conform to the Contractor's published specifications provided to the Commonwealth at the time of Equipment installation. The Commonwealth reserves the right to acquire such supplies from any Contractor of its choice.

62. WARRANTY

Beginning on the date of acceptance, Contractor shall minimumly provide twelve months of depot warranty Services (Return to Vendor) for all Equipment purchased under this Agreement. Contractor shall act as sole point-of-contact for all units repaired under warranty. Contractor shall pay all shipping, both ways, to and from depot site. Contractor shall fix or replace the unit within 72 hours of receipt and return to Authorized User within 24 hours, after fix or replacement.

Contractor shall provide an option to upgrade the above depot warranty. This warranty upgrade shall be On-Site, 8 a.m. to 5 p.m. EST, with a 4 hour response time.

Prior to the expiration of the warranty period, whenever Equipment is shipped for mechanical repair or replacement purposes, the Contractor will bear all costs associated with returning the Equipment to the Contractor's repair facility. When repair of the Equipment is completed the Contractor shall bear all costs associated with returning the Equipment to the State's original point of shipment.

Cost of shipping includes but is not limited to, costs of packing, transportation, rigging, drayage and insurance for damage or loss. Contractor shall repair or replace the Equipment and return within 72 hours of receipt.

63. MAINTENANCE

Upon expiration of the initial twelve month warranty services period, the Contractor shall provide maintenance of Equipment under the same provisions as depot and On-Site warranty for any Equipment purchase under this Contract, for the duration of the Contract. Maintenance shall be offered and priced in annual increments. All Maintenance is purchased at the sole discretion of the Commonwealth / Authorized User.

On-Site Warranty/Maintenance of Equipment shall not include electrical work external to the Equipment, the furnishing of supplies, or adding or removing accessories, attachments, or other devices not provided under this Agreement. On-Site Warranty/Maintenance of Equipment also shall not include repair of damage resulting from transportation by the Commonwealth between Commonwealth sites or from accident, unless the accident is caused by negligent or intentional acts or omissions of Contractor or its agents.

NOTWITHSTANDING ANY PROVISION IN THIS SOLICITATION, THE COST OF ALL WARRANTIES AND MAINTENANCE SHALL INCLUDE SUPPORT FOR ALL SOFTWARE AND FIRMWARE. ALL WARRANTIES SHALL BE CONSIDERED TO BE PREFORMANCE BASED AND THEREFORE THE CONTRACTOR IS RESPONSIBLE FOR ANY REPORTED FAILURE OF THE EQUIPMENT DURING ANY WARRANTY OR MAINTENANCE PERIOD THAT THE AUTHORIZED USER HAS SUBSCRIBED TO.

64. REPLACEMENT PARTS

All parts used under this Agreement must be new parts or refurbished parts certifiable as new. Parts which have been replaced shall become the property of the Contractor.

65. CONTRACTOR'S WARRANTY POINT-OF-CONTACT

The Contractor shall provide the Commonwealth with a single designated point of contact and toll-free telephone number for ordering, billing and problem resolution.

66. COMMONWEALTH'S RESPONSIBILITIES DURING MAINTENANCE

a. During any term of maintenance, Commonwealth personnel shall not perform maintenance or attempt repairs to the equipment except as authorized in writing by the Contractor.

b. The Commonwealth shall permit access to the equipment which is to be maintained, subject to the installation site's security regulations,

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c. The Commonwealth may provide storage space for spare parts and working space, including heat, light, ventilation, electric current and outlets, and telephones (for local calls only) for the use of maintenance personnel.

d. The Commonwealth shall maintain the site in accordance with the equipment environmental specifications furnished by the Contractor.

67. DOWNTIME

A Product is considered to be "down" if it does not operate in accordance with the technical specifications and functional descriptions contained or referenced in this Agreement, or if it must be released to the Contractor for unscheduled remedial services, or if data damaged by the malfunction has not yet been reconstructed.

Downtime shall commence when the Commonwealth reports the malfunction to the Contractor at its designated contact point, and shall end when the Product and storage media are returned to the Commonwealth in a condition that enables it to operate in accordance with the above specifications and descriptions. However, malfunction of redundant peripherals shall not constitute downtime if the malfunctioning peripherals do not exceed 10% of the total peripherals available for the identified function.

68. RESERVED

69. EQUIPMENT REPLACEMENT

If the Effectiveness Level of any Product falls below 95% for three (3) consecutive months, the Contractor shall, upon the Commonwealth's request, replace the Product at no cost to the Commonwealth. The replacement shall be installed no later than fifteen (15) working days after the Commonwealth's request is received by Contractor.

70. PREVENTIVE MAINTENANCE

The Contractor shall specify in writing the frequency and duration of the preventive maintenance required for the equipment ordered under this Agreement, and the Commonwealth shall specify the schedule for the performance of the preventive maintenance. This schedule may be modified by mutual agreement.

71. MALFUNCTION REPORTS

The Contractor shall furnish a signed malfunction incident report to the purchasing agency's operations manager upon completion of each maintenance call. The report shall, at a minimum include, the following:

- (a) Date and time notified

- (b) Date and time of arrival
- (c) Type and model number(s) of machine(s)
- (d) Date and time when equipment is returned to operation
- (e) Description of malfunction
- (f) Signature of Contractor representative
- (g) Signature of Commonwealth representative

72. ADDITIONAL MAINTENANCE CHARGES

The only items for which additional maintenance charges may be made are as follows:

- a. Replacement parts made necessary by abuse or negligence of the Commonwealth;
- b. Remedial Maintenance performed outside the PPM, if the Commonwealth specifically directs that such service be performed prior to commencement of the next day's PPM. However, work begun during the PPM shall continue for one (1) hour after the PPM without charge to the Commonwealth. The charge for such services shall not exceed the rates listed below:

The maximum charge for any one occurrence shall not exceed the cost of a four (4) hour maintenance service call. This maximum charge will include the travel time to and from the installation site

73. PRODUCTS OR SERVICES NOT LISTED IN CONTRACTOR'S CATALOGUE

The Prices for any Products or Services not listed in the Contractor's catalogue shall be as identified at the time of award and not subject to change for the initial Term of the Contract; from date of award and continuing for two years. Thereafter, the Contractor may request an increase only for those Products or Services not listed in his Catalogue. Increases for additional annual periods shall be effective on the anniversary date for each succeeding year. All increases will be governed by the CPI-W index entitled "Other Services". The percentage increase shall not exceed the above index's most recent percentage available to the Commonwealth as published by the Bureau of Labor Statistic's, Philadelphia Office. If maintenance prices remain the same or decrease for succeeding years, the State shall be afforded the opportunity to renew the maintenance services at the lowest price available to any other customer.

74. eVA BUSINESS-TO-GOVERNMENT CONTRACTS:

The eVA Internet electronic procurement solution, web site portal www.eva.state.va.us, streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies.

As a vendor desiring to provide goods and/or services to the Commonwealth the contractor shall participate in the eVA Internet e-procurement solution and agree to the comply with the following:

- a. Submit a fully executed American Management Systems, Inc., (AMS) Trading Partner Agreement, a copy of which can be accessed and downloaded from www.eva.state.va.us. AMS is the Commonwealth's service provider to implement and host the eVA e-procurement solution.
- b. Provide an electronic catalog (price list) for items awarded under a term contract. The format of this electronic catalog shall conform to the eVA Catalog Interchange Format (CIF) Specification that can be accessed and downloaded from www.eva.state.va.us.

The contractor's failure to comply with the above requirements shall entitle the Commonwealth to terminate this contract at anytime without penalty.

75. CONTRACTOR PRODUCT PROMOTIONS ("SALES")

Contractor may sponsor product promotions during the Contract term or any extensions thereof under the following conditions:

1. Contractor is required to provide in writing to DIT, at least five (5) days prior to the proposed promotion, the dates of the promotion or the duration of the promotion (at least thirty days) to include the commencement date and the ending date; the acceptable writing may be e-mail, or correspondence via USPS, or other, and
2. Contractor is required to identify in writing, the exact products or product lines covered in the promotion, and
3. Contractor is required to identify in writing, the pricing during the promotion or the percentage discount, and
4. All Contract Product Promotions are required to be available to all Authorized Users of the Contract. Should the Contractor request a promotion that would be limiting, either through product configuration or quantities of products, the Commonwealth at its discretion, will not provide a written agreement. Both parties agree that Contractor Product Promotions shall not target any one Authorized User, or a few Authorized Users, and
5. All Contractor Product Promotions shall be mutually agreed to in writing, and Contractor shall be in breach of the Agreement in the absence of a writing from both parties; the writing may be e-mail or correspondence via USPS or other, and
6. In any instance of conflict between this clause, "Contractor Product Promotions" and the Agreement, this clause shall take precedence, and
7. In any event wherein the Contractor proposes prices that are different than the Contract prices to any Authorized User, without first obtaining mutual agreement in the format as identified herein, the Contractor shall be in breach of the Agreement and the Commonwealth shall have all remedies available under Contract and law.

PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT.

D.I.T.

CONTRACTOR

BY:

DSH

NAME:

Douglas S. Hall

TITLE:

CFO

DATE:

5/13/02

COMMONWEALTH OF VIRGINIA

BY:

Joe Parr

NAME:

Joe A. Parr

TITLE:

Contracts Engineer

DATE:

(D.I.T.) 6/7/02

ATTACHMENT "A"
TO
AGREEMENT VA-020501-WHIT

PRODUCT PRICING

Attachment "A" is hereby incorporated into and made an integral part of Agreement Number VA-020501-WHIT between Audio Fidelity Communications Corporation d.b.a. The Whitlock Group and the Commonwealth of Virginia. In the event of any inconsistency between this Attachment "A" and Agreement VA-020501-WHIT, the provisions of Agreement VA-020501-WHIT shall control.

PRICING

The price of all Products under this Agreement is identified after the appropriate discount is applied to the Contractor's referenced Catalog Price List(s) or the manufacturer's suggested retail price. The Contractor shall make its catalogs/price lists available on its web site and/or the eVA web site.

Catalog price adjustments are allowed to be upward or downward. Catalog price adjustments may only occur when the Contractor's referenced catalog/price list(s) changes on a selected item. The Contractor shall notify DIT of catalog/price list(s) changes on a monthly basis by posting updated catalog/price list(s) to its web site. Adjustments to the Discount rates are allowed only when a cost savings to the Commonwealth will occur and are mutually agreed upon in writing in advance by the Contractor and DIT.

Installation and Integration rates not contained in the Contractor's referenced catalog/price list(s) may be adjusted after the first two years of the Contract term and annually thereafter.

The appropriate discount by is as identified below:

<u>Catalog</u>	<u>Categories</u>	<u>Discount</u>
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A. Polycom

(Small Room) SP128, SP 384,128	40%
(Medium Room) H323, MP, MP OCP	40%
(Board Room) FX H.323, VS4000	40%
(System Modules) Quad BRI, V.35, PRIT-1	40%
ViaVideo USB systems	20%
Polycom Installation	15%
Polycom on-site Installation	15%
Polycom Extended + Premium Plus	25%
Global MGT Software	15%
ViewStation Upgrades	20%
Accessories and Replacement Parts	5%

B. PictuerTel

IPower Systems	20%
Cables and Accessories	5%

Installation and Training	10%
Service Warranties	5%

C. Tandberg

2500, 6000, 7000, 8000 Codec	25%
500, 800, 1000	20%
Accessories, cables, Misc Cameras	15%
Document Cameras	15%
Educator Series	25%
Portable Systems	25%
Telemedicine	15%
Installation and Onsite Maintenance	10%
Quick Start Extended Warranties	0%
Tandberg Management Suit Software	20%
System Upgrades	10%

D. Polycom Network Services (Accord)

MCU/ Bridges	30%
Premier Support	10%

E. Toshiba

LCD and DLP Projectors	26%
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F. VFI Furniture

CARTS	35%
Accessories	25%

G. Shure

ALL	24%
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H. Sony

LCD and DLP Projectors	19%
Plasma Screens	16%
Televisions and Monitors	15%
VCRs	13%
DVD Players	8%
CD Players	13%

I. AKG Acoustics, Inc

ALL	13%
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J. ALTINEX, INC

ALL	14%
-----	-----

K. AMX, Corporation

ALL	6%
-----	----

L. Anchor Audio, Inc.

ALL	22%
-----	-----

M. Ashly Audio, Inc.



20%

N. Audio-Technica US	ALL	16%
O. Canon USA, Inc Video Division	ALL	17%
P. Chief Manufacturing	ALL	13%
Q. Creston Electronics	ALL	18%
R. Crown International, Inc.	ALL	20%
S. Da-Lite Screen	ALL	23%
T. Draper, Inc	ALL	20%
U. Eiki International, Inc	ALL	28%
V. ELMO Mfg. Co.	ALL	25%
W. Extron Electronics	ALL	20%
X. Gentner Communications	ALL	13%
Y. InFocus Corporation	ALL	28%
Z. Inline, Inc.	ALL	18%
AA. JBL Professional	ALL	23%
AB. KSI Professional	ALL	31%
AC. Mackie Designs, Inc.	ALL	8%
AD. Marshall Furniture	ALL	8%
AE. Middle Atlantic Products	ALL D.I.T.	9%



AF. MoniVision	ALL	8%
AG. NEC Technologies, Inc. (Plasma)	ALL	19%
AH. NEC Technologies, Inc. (Projectors)	ALL	26%
AI. Pioneer Electronics USA Inc.	ALL	24%
AJ. Proxima Corp.	ALL	28%
AK. Rane Corp.	ALL	6%
AL. RGB Spectrum	ALL	5%
AM. Samsung	ALL	16%
AN. SMART Technologies, Inc.	ALL	18%
AO. Synelec USA, Inc.	ALL	6%
AP. VanSan Corp.	ALL	8%
AQ. Video Accessory Corp.	ALL	8%
AR. WolfVision, Inc.	ALL	16%

AS. Integration Services

Senior Consultant Hourly	\$90.00
Senior Consultant Daily	\$720.00
Consultant Hourly	\$90.00
Consultant Daily	\$720.00
Other Programming (Creston;AMX)	\$90.00



AT. Installation Services

Senior Technician Hourly	\$75.00
Senior Technician Daily	\$600.00
Technician Hourly	\$75.00
Technician Daily	\$600.00
Other	

SHIP / TO BILL TO ADDRESSES:

The shipping and billing addresses will be included on individual orders referencing this Contract.

DELIVERY SCHEDULE:

All shipments shall be FOB destination. Shipping charges and the IFA shall be included in the discounted price of the products. No additional charges will be allowed. The delivery schedule shall be established by individual order, but shall not exceed 30 days after receipt of order (ARO) by the Contractor. The Authorized User, at its option, may postpone the delivery date by notifying the Contractor at least seven (7) days prior to the delivery date. However, the delivery date shall not be postponed more than a total of thirty (30) days.

INSTALLATION:

Installation costs shall include: travel, unpacking, installation, connectivity to Authorized User's equipment, equipment power up, diagnostics, configuration, test for proper operation, training, user documentation, and removal of all packing materials and debris.

All installations shall be done according to the manufacturer's specifications, completed in a timely and professional manner, and in accordance with local and state code requirements. Cables must be: clearly marked, bundled neatly, follow cabling trays as much as possible, and hung on cable hangers when no trays are available.

DIT POINTS OF CONTACT:Contract Compliance Information:

Mrs. T. J. Hudson, CPPB, VCO
Contracts Administrator
(804) 371-5971
(804) 371-5969 (Fax)
thudson@dit.state.va.us

Technical Information:

Joe A. Parr, CPPO, VCO
Contract officer
(804) 371-5991
(804) 371-5969 (Fax)
parr@dit.state.va.us

CONTRACTOR POINTS OF CONTACT:

Todd White, Account Management and Sales, whitet@whitlock.com

Chris Vickers, Videoconferencing Sales Engineer, vickersc@whitlock.com

Staci Saunders, Customer Service, saunders@whitlock.com

Emily Cable, Service, Installation & Repair, cable@whitlock.com

Doug Hall, Contracts/Corporate Management, halld@whitlock.com

The Whitlock Group

3900 Gaskins Road

Richmond, VA 23233

(804) 273-9100

(800) 726-9843

(Fax) 273-9380

www.whitlock.com



ATTACHMENT "B"
TO
AGREEMENT VA-020501-WHIT

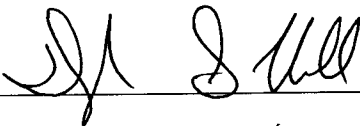
CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

- a. No Federal appropriated funds have been paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee or an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative Agreement, and the extension, continuation, renewal, amendment, or modification of any Federal Contract, grant, loan, or cooperative Agreement.
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Contract, grant, loan, or cooperative Agreement, the undersigned shall complete and submit standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and Contracts under grants, loans and cooperative Agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature:




Printed Name:

DOUGLAS S. HALL

Organization:

THE WHITLOCK GROUP

Date:

 5/13/02